

ELTIF 2 has been published today: It will enter into force on 9 April 2023

The amendments to Regulation (EU) 2015/760 on European long-term investment funds (ELTIF 2) have been published in the Official Journal of the European Union.

ELTIFs that are already authorised under the current ELTIF Regulation have until 11 January 2029 to comply with ELTIF 2, unless they do not raise additional capital, in which case they shall be deemed to comply with the revised regulation.

ELTIFs authorised before 10 January 2024 may choose to be subject to ELTIF 2 as long as they notify their national competent authority. In Luxembourg, ELTIFs can therefore be authorised under ELTIF 2 from its entry into force as of 9 April 2023.

As a reminder, in 2015, the ELTIF Regulation introduced a new type of alternative investment fund that has the unique advantage of being able to market its units/shares/interests across the European Economic Area to both professional and retail investors. Despite this major advantage, the number of ELTIF setups, as well as the amount of money raised by ELTIFs did not take off due to constraints under the ELTIF Regulation, mainly relating to eligible assets and diversification rules as well as rules relating to the distribution to retail investors.

Those barriers to the success of ELTIFs will be lifted by ELTIF 2, and in particular, with the following amendments:

- Broader scope of eligible assets with the inclusion for instance of listed companies with a market capitalization of up to EUR 1.5 billion, FinTech companies, simple, transparent and standardised securitisations (STS) and green bonds;
- Broader definition of what constitutes a "real asset", which is now simply "an asset that has an intrinsic value due to its substance and properties", thus increasing significantly the type of real assets in which an ELTIF can invest;
- Possibility to adopt a fund-of-fund strategy or to set up a master-feeder structure;
- More flexible portfolio composition with a larger portion of liquid assets and less strict diversification rules ;
- Exemption of the diversification and concentration rule requirements for ELTIFs marketed to professional investors only;

- Clarification that ELTIFs can invest the majority of their assets in investments located in third countries;
- Possibility to conduct minority co-investments through intermediary entities, including special purpose vehicles, securitization or aggregator vehicles, and holding companies;
- Removal for retail investors of both the minimum investment amount of EUR 10,000 and the limit of investments in ELTIFs to 10% of their portfolio;
- While the suitability test for retail investors is still required, there is no longer an obligation to provide investment advice, and with the possibility for a retail investor to bypass a negative conclusion to that test by giving express consent to proceed with the transaction; and
- A MIFID II license is no longer required for AIFMs that market themselves the ELTIFs which they manage to retail investors (without investment advice).

It is likely that draft regulatory technical standards (RTS) will be published for public consultation in the coming weeks. These RTS will bring further clarification on the provisions relating to the redemption of units or shares of ELTIFs.

To conclude, it is expected that the revised ELTIF regulation will significantly enhance the structuring possibilities and therefore contribute to the growth of ELTIFs

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